

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE MIDDLE EAST FORUM	:	CIVIL ACTION
	:	
v.	:	No. 19-5697
	:	
LISA REYNOLDS-BARBOUNIS	:	

ORDER

AND NOW, this 25th day of November, 2020, upon consideration of Plaintiff The Middle East Forum’s Motion to Compel Defendant to Produce Full and Complete Discovery, Defendant Lisa Reynolds-Barbounis’s opposition, and Middle East Forum’s reply, it is ORDERED the Motion (Document 63) is GRANTED in part. On or before December 4, 2020, counsel for Barbounis shall identify and supply to Cornerstone Discovery her account username and password for ProtonMail, and shall promptly cooperate with Cornerstone to complete collection of her Facebook, Telegram, Signal, and Wickr accounts. To the extent Barbounis does not have an account for any of these applications, Barbounis shall provide a declaration so stating. The Motion is DENIED in all other respects.¹

¹ Middle East Forum asks the Court to compel Barbounis to produce her account usernames and passwords for five applications—Telegram, Signal, ProtonMail, Wickr, and Facebook—pursuant to the Court’s June 25, 2020 Order. That Order compelled Barbounis to provide Cornerstone with her account usernames and passwords for all Google accounts, two specific email accounts, Facebook, Twitter, Instagram, WhatsApp, Signal, Telegram, Wickr, iCloud, and Dropbox. Although Barbounis maintains she has provided access to every one of her accounts, the record before the Court does not support this assertion. In her response to the motion to compel, Barbounis has included an email demonstrating she provided the necessary account information for her Google accounts, the specified email accounts, Twitter, Instagram, iCloud, and Dropbox. Resp. in Opp’n Ex. C (ECF No. 73). However, for her WhatsApp, Signal, and Telegram accounts, the email indicated the logins were associated with her phone number and did not require a password. *Id.* Barbounis further stated she did not have Wickr installed. *Id.* She did not address ProtonMail. In reply, Middle East Forum has provided several additional emails which show Cornerstone and counsel for Middle East Forum notified Barbounis that the Facebook collection had failed and that, while Cornerstone had identified messages from WhatsApp on the images of Barbounis’s devices, the images did not appear to contain messages from Telegram, Wickr, or Signal. Reply Exs. C-E

(ECF No. 74). Middle East Forum has also provided a declaration from Robert Centofanti of Cornerstone stating counsel for Barbounis has not responded to Cornerstone's request for assistance in completing the Facebook collection, Cornerstone did not receive a username or password for any ProtonMail account, and Cornerstone does not have data for Telegram, Signal, or Wickr. *Id.* Ex. F. However, that same declaration acknowledges it is unclear whether data for Telegram, Signal, or Wickr exists. *Id.* Because Barbounis has not fully complied with the June 25, 2020 Order, the Court directs Barbounis to provide her account username and password for ProtonMail and to work with Cornerstone to complete collection from her Facebook, Telegram, Signal, and Wickr accounts. If Barbounis does not possess an account for any of these applications, Barbounis shall provide a declaration so stating.

Middle East Forum further asks this Court to compel Barbounis to provide her iWatch and her husband's Lenovo computer pursuant to the Court's February 19, 2020 Order. That Order compelled Barbounis to "image all electronic devices in her possession, custody, or control which currently contain or ever contained any of Middle East's documents or any documents referring to or relating to Middle East's documents." In her response to Middle East Forum's motion, Barbounis represents her iWatch and her husband's Lenovo computer do not contain any documents belonging to Middle East Forum and do not contain any documents referring or relating to documents that belong to Middle East Forum. Resp. in Opp'n 12 (ECF No. 73). In support of its motion, Middle East Forum represents that, during his deposition, Barbounis's husband stated Barbounis used these two devices "during her employment at MEF." Mot. to Compel 30 (ECF No. 63). Given Barbounis's representation that these devices do not contain any relevant documents, however, the Court is not persuaded that the fact that she may have used these devices during her employment at Middle East Forum requires her to image the devices. Absent any further reason to believe these two devices ever contained relevant documents, the Court will not compel Barbounis to image either her iWatch or her husband's Lenovo computer.

Lastly, Middle East Forum's motion seeks attorney's fees and costs incurred in connection with its efforts to obtain the requested materials. Under Federal Rule of Civil Procedure 37, if a motion to compel is granted in part and denied in part, a court "may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion." Fed. R. Civ. P. 37(a)(5)(C). Here, the Court's June 26, 2020 Order (ECF No. 59) directed the parties to request a teleconference with the Court if they could not resolve future discovery disputes. This Order cited Section II.C. of the Court's Policies and Procedures, which explicitly states motions to compel should not be filed until a teleconference has been held. Middle East Forum filed the instant motion to compel without requesting a teleconference, and a teleconference may have obviated the need for the motion. Moreover, Barbounis at least facially attempted to provide much of what the Court is compelling. Barbounis indicated that there were no passwords for her Telegram or Signal accounts, and, like the WhatsApp account for which Cornerstone collected data without issue, they were accessible via her phone number. Resp. in Opp'n Ex. C (ECF No. 73). Additionally, Barbounis notified Cornerstone she did not have Wickr downloaded. *Id.* It is unclear to the Court whether Barbounis has a ProtonMail account, or whether any data for Telegram, Signal, or Wickr even exists. Barbounis, however, has provided no excuse for why she has not worked with Cornerstone to resolve these issues and to complete the collection of data from her Facebook account after being alerted that Cornerstone's original collection attempt had failed. Although the Court is troubled by

It is further ORDERED Middle East Forum's Motion for Leave to File Reply (Document 74) is GRANTED. The reply brief shall be deemed filed.

BY THE COURT:

/s/ Juan R. Sánchez

Juan R. Sánchez, C.J.

defense counsel's apparent disregard of multiple attempts by plaintiff's counsel and Cornerstone to resolve the aforementioned collection issues without court intervention, *see* Reply Exs. C-F, given the circumstances, including Middle East Forum's resort to motion practice without first requesting a teleconference with the Court, the Court will not order attorney's fees for the portion of the motion the Court is granting at this time. The Court expects defense counsel to fully comply with all aspects of this and any other Court orders.